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9 UNITED STATE BANKRUPTCY COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 In re **HARBANS S. GREWAL** and **MANJIT K.**
12 **GREWAL,**

13 Debtors.

14 **HARBANS S. GREWAL** and **MANJIT K.**
15 **GREWAL,**

16 Plaintiffs,

17 vs.

18 **SANTA CRUZ COUNTY BANK** and Does 1-10

19 Defendants

Case No. 10-60800

Chapter 7

Adversary Proceeding No. 11-05067

DEFENDANT'S TRIAL BRIEF

20 **INTRODUCTION**

21 After the consensual dismissal of the third cause of action, the remaining two causes of
22 action in the first amended complaint on file in this adversary complaint (the "FAC") allege
23 claims by plaintiff **HARBANS S. GREWAL** and **MANJIT K. GREWAL** (the "Debtor") against **SANTA**
24 **CRUZ COUNTY BANK** (the "Bank") for violation of the automatic stay under Section 362 and
25 violation of the post discharge injunction under Section 524. Because the third cause of action
26 for a pre-petition state law conversion claim was dismissed, and because Bank's cross complaint
27 alleges offset claims for pre-petition debts against such conversion claims, Bank intends to dismiss
28 its cross-complaint, without prejudice and with each party bearing its own attorneys' fees and
costs, consistent with the stipulation dismissing the third cause of action in Debtor's FAC.

The assets in question in this case are the following (the “Subject Assets”):

- | | |
|--|---|
| a. 1993 Gold BMW 740iL; | n. Personal clothing & blue towels |
| b. BMW engine on rollers; | o. Books, and desktop computer located in the |
| c. BMW rims with old tires | shop |
| d. MBZ rims with old tires | p. Engine Scope |
| e. Water cooler | q. Smog Machine |
| f. Small refrigerator | r. Grease Dispenser |
| g. Dynamometer (in ground) | s. Oil |
| h. Evaporator machine next to smog machine | t. Mop Bucket |
| i. Big cooling Fan | u. O-Rings & Quarter Pins (small plastic boxes) |
| j. Miscellaneous parts | v. Drain Pans (3) |
| k. Parts cleaner (blue box) | w. Parts Cart |
| l. Used black hoses @ nozzles (on shelf) | x. Battery Water Container; and |
| m. Grinder | y. Funnels (misc.) |

Debtor valued the Subject Assets in his Schedules B and C at between \$4500 and \$5600.

Bank does not dispute that the bulk of such Subject Assets were originally acquired by Debtor when he originally acquired the gasoline station business in 2000, but asserts that same were transferred in 2004 to Debtor's wholly owned corporation All American Gas & Auto ("All American"), when Debtor purchased the real estate on which the business was operated in 2004 (the "Real Property"), a full three years before the Bank's 2007 loan.

At trial, the evidence will show that the Subject Assets were in fact owned by All American, were pledged by All American to Bank in 2007 as part of Bank's loan to All American, and were acquired by Bank in connection with the Bank's pre-petition unified foreclosure sale.

THE EVIDENCE

Debtor's 2000 Purchase of Business Assets

In 2000, Debtor acquired the gasoline station business (but not the Real Property on which same was operated). At the time of such purchase, Debtor obtained a bill of sale itemizing certain

1 of the assets. Following such purchase, Debtor individually operated the gasoline and service
2 station business, obtained business insurance on (among other things) the Subject Assets (which
3 business insurance named him individually as the loss payee), and depreciated such assets on
4 Schedule C of Debtor's federal form 1040 personal income tax statement.

5 In 2003, Debtor leased from BWC Leasing a smog machine, cooling fan, and in-ground
6 dynonometer (items g, i, q) (the "Smog Equipment"). Ownership of such Smog Equipment was
7 retained in BWC Leasing, not Debtor.

8 ***Debtor's 2004 Purchase of Real Property and Formation of All American.***

9 In 2004, Debtor acquired right to purchase the Real Property. Prior to completing such
10 purchase, Debtor formed All American, caused All American to purchase the Real Property, filed
11 Fictitious Business Name Statement for All American reflecting Gilroy Gas & Auto as a fictitious
12 business name, and transferred the business to All American (including the assets originally
13 acquired in 2000, the Subject Assets, the lessee's rights under the 2003 lease for the Smog
14 Equipment, all inventory, and the additional assets acquired for use in the gasoline station business
15 from and after 2000 until the date of such incorporation [the "Transferred Assets"]).

16 All American thereafter sold all inventory it acquired from Debtor, retained proceeds from
17 such inventory sales in All American, sold, used, consumed and exploited all Transferred Assets
18 in All American's conduct of the gasoline and service station business, and retained in All
19 American all revenues and earnings from such sale, use, consumption and exploitation of the
20 Transferred Assets.

21 All American never made any payments to Debtor for any of the Transferred Assets
22 (including the Subject Assets), All American's books did not reflect any note or account payable
23 or any lease payable by All American to Debtor personally, there is not any lease to use the
24 Subject Assets between Debtor and All American, no rent payments were made to Debtor from
25 All American for use of Subject Assets, and no UCC filing was made in favor of Debtor on All
26 American respecting the Subject Assets.

27 Following its incorporation and transfer of the Transferred Assets in 2004, All American
28 made all lease payments on Smog Equipment, All American paid all accounts payable on

1 inventory acquired from Debtor and on inventory thereafter acquired by All American, All
2 American depreciated all assets (including, without limitation, Transferred Assets and the Subject
3 Assets) on All American's income tax return, Debtor ceased depreciating the gasoline station
4 assets (including, without limitation, the Transferred Assets and the Subject Assets) on Debtor's
5 personal tax return, Debtor directed insurer to change loss payee to All American effective July
6 31, 2004, All American maintained insurance on assets (including, without limitation, the
7 Transferred Assets and the Subject Assets) naming All American as loss payee and paying all
8 premiums on such insurance, Debtor ceased insuring the Transferred Assets and the Subject
9 Assets in Debtor's own, individual name, All American filed Personal Property Tax Declarations
10 form 571-L on the Transferred Assets and the Subject Assets showing such assets as being owned
11 by All American, and Debtor ceased filing any personal 571-L post 2004 with respect to the
12 Transferred Assets and the Subject Assets.

13 Debtor will seek to explain that all of these actions in changing the beneficiary on
14 insurance, filing forms 571-L in the corporation's name, transferring depreciation to All American
15 and otherwise transferring all indicia of ownership to All American, in removing himself as a loss
16 payee of insurance on the Subject Assets, on discontinuing the deprecation of the Subject Assets
17 on Debtor's individual return, and on the discontinuation in the filing of form 571-L on the
18 Subject Assets in Debtor's name from and after 2004, were all done without his authority or
19 direction.

20 Debtor's bookkeeper and Bank's expert will both testify that it the applicable standard of
21 care for bookkeeping and accounting professionals would be to inquire after client formed a
22 corporation if client wanted to transfer business and its sole proprietorship to the corporation and
23 to obtain express instruction and authorization to reflect such a transfer on the individual and
24 corporate books, records and tax materials for the individual and corporation. Additionally, the
25 business records of the insurance broker/agent will reflect that the transfer of the insurance policy
26 to All American was done at Debtor's specific request and instruction.

27 Debtor testifies that he never sought to amend any of the income or property tax returns
28 or otherwise sought to correct what Debtor now claims was this egregious error.

1 Debtor would have the court believe that all of the actions in transferring the assets to the
2 corporation for tax, insurance and other purposes was all part of some unauthorized grand
3 conspiracy, intended to deprive Debtor of assets that he claims he legitimately retained.
4 Unfortunately, aside from Debtor's own testimony, all of the objective evidence confirms that
5 Subject Assets were transferred to All American. Further, Debtor's own discontinuation of the
6 reporting and payment obligations on the Subject Assets from 2004 forward confirms that he
7 intended such a transfer to All American. Consequently, the Subject Assets were subject to
8 Bank's lien and were lost in foreclosure in September 2010.

9 ***Acquisition of the EVAP Machine.***

10 In 2007, All American leased an Evaporation ("EVAP") machine (item h) in name of All
11 American. While Debtor asserts claims with respect to this machine, the purchase documents
12 confirm that same was leased in All American's own name and was owned by Irwin Commercial
13 Finance, such that Debtor never held any right, title or interest in same. Later that same year,
14 All American filed Fictitious Business Name Statement for All American reflecting Gilroy VP
15 Racing as a fictitious business name.

16 ***2007 Loan by Bank to All American***

17 In July of 2007, All American applied for a SBA loan from Bank to refinance the loan that
18 All American originally undertook to purchase the Real Property.

19 In connection with such a loan request, Debtor provided bank with Debtor's personal
20 financial statement (the "PFS"), which was signed under penalty of perjury and in which Debtor
21 represented that the only personal property owned by Debtor was limited to "net value of All
22 American Gas & Auto, Inc." No reference was contained in the PFS to any claim that Debtor
23 owned Subject Assets.

24 The blanks in Debtor's PFS were completed by Bank's representative, while meeting with
25 and in consultation with Debtor. Following completion, the PFS was signed by Debtor.

26 No copy of a bill of sale related to the initial purchase of the gasoline business and/or the
27 Subject Assets was ever provided to the Bank prior to funding the loan and the Bank's files do not
28 reflect or contain a copy of same. The absence of such a document is admissible itself as a

1 business record. United States Federal Rules of Evidence, 28 U.S.C. §803(7). The first time
2 Bank saw same was in connection with Debtor's summary judgment motion in this case.

3 In connection with such loan application, Bank issued its commitment letter to All
4 American, which commitment letter indicated Bank would require deed of trust on the Real
5 Property and a blanket lien on All American's personal property assets.

6 On August 14, 2007, the loan closed. The Bank's loan was evidenced by (among other
7 things) a signed note, deed of trust, business loan agreement and security agreement on all assets,
8 with UCC filing. Debtor signed an unsecured continuing guaranty in connection with such debt.

9 Page 1 of the security agreement grants Bank a security interest in following property:

10 COLLATERAL DESCRIPTION. The word "Collateral" as used in this Agreement means
11 the following described property, whether now owned or hereafter acquired, whether now
12 existing or hereafter arising, and wherever located, in which Grantor is giving to Lender
a security interest for the payment of the Indebtedness and performance of all other
obligations under the Note and this Agreement:

13 All Inventory, Chattel Paper, Accounts, Equipment, General Intangibles and Fixtures.

14 In addition, the word "Collateral" also includes all the following, whether now owned or
15 hereafter acquired, whether now existing or hereafter arising, and wherever located:

16 (A) All accessions, attachments, accessories, tools, parts, supplies, replacements of and
additions to any of the collateral described herein, whether added now or later.

17 All American defaulted and Bank sent demand letters to All American and Debtor dated
18 7-27-09, 8-5-09, and 1-5-10. All American and Debtor failed to cure such default, and Bank
19 recorded a notice of default on 2-2-10 and conducted a unified foreclosure sale under Civil Code
20 Section 2924f and UCC Section 9604 on September 29, 2010. On September 30, 2010, the
21 foreclosure trustee recorded its Trustee's Deed upon Sale and on October 1 recorded an amended
22 Trustee's Deed upon Sale. Since the Subject Assets were transferred by Debtor to All American
23 prior to 2007 Bank loan, they were encumbered by Bank lien and Bank acquired title to same
24 when it conducted its unified foreclosure.

25 ***Debtor Files Chapter 7***

26 On October 18, 2010, following Bank's September 29 foreclosure sale, Debtor filed for
27 Chapter 7 bankruptcy protection.
28

1 In connection with such proceedings, Debtor purported to serve notice of his bankruptcy
2 on Bank at PO Box 8426 Santa Cruz, CA 95061. The testimony will confirm that the mailing
3 address used by Debtor was the address for mailing payments, not notices.

4 The Business Loan Agreement and Security Agreement both provide as follows:

5 Notices. Any notice required to be given under this Agreement shall be given in writing,
6 and shall be effective when actually delivered, when actually received by telefacsimile
(unless otherwise required by law), when deposited with a nationally recognized overnight
7 courier, or, if mailed, when deposited in the United States mail, as first class, certified or
8 registered mail postage prepaid, directed to the addresses shown near the beginning of this
9 Agreement.

10 The address for notices recited on page 1 of each of the loan documents was: Santa Cruz
County Bank, Santa Cruz Office, 325 Soquel Avenue, Santa Cruz, CA 95062.

11 ***Notice to Bank Defective under Section 342.***

12 Code Section 342(c)(2) requires the debtor to use an address and account number for
13 required notices to be given by the debtor based on pre petition communications with the creditor
14 and must reference a loan number. 11 U.S.C. § 342(c)(2). Here, notices were apparently sent
15 to an address other than the Bank's specified address for notice and failed to reflect the loan
16 number on such notice. The Bank will testify that its records do not reflect any notice of
17 bankruptcy as having been received by the Bank. The absence of such a document is admissible
18 itself as a business record. United States Federal Rules of Evidence, 28 U.S.C. §803(7).

19 Even if such a notice were sent and received at the address specified for receiving
20 payments, no loan number was reflected in the notice. The absence of a loan number is critical,
21 because the Bank's records would be indexed by the primary borrower's name and/or loan
22 number. In this case, the notice reflect Debtor (not All American) and failed to include any loan
23 number. If a notice was received by the payment precessing personnel at the payment address,
24 such personnel would not have any idea to whom at the Bank such notice should be directed,
25 because the Bank's records would not reflect any loan to Debtor. Thus, no action or processing
26 of such a notice could occur, because there was not any loan number that would cue the Bank on
27 where to look for obligations related to Debtor. This is exactly why Section 342 requires loan
28 number references. Congress recognized that fairness dictates that a lender with many loans and
obligations be given some method through which it can identify the obigor/obligation at issue.

1 The Code acknowledges that notice provided to a creditor by the debtor or the court other
2 than in accordance with this section shall not be effective notice, until such notice is brought to
3 the attention of such creditor. 11 U.S.C. §342(g)(1).

4 The Code provides that if the debtor or the court fails to provide “effective” notice as
5 required by Code § 342, then the result is to limit certain damages [a “monetary penalty”] for stay
6 violations:

7 A monetary penalty may not be imposed on a creditor for a violation of a stay in effect
8 under section 362(a) (including a monetary penalty imposed under section 362(k)) or for
9 failure to comply with sections 542 or 543 unless the conduct that is the basis of such
violation or of such failure occurs after such creditor receives notice effective under this
section of the order for relief. 11 U.S.C. §342(g)(2).

10 Where a creditor violated stay and the debtor failed to show the creditor had notice, the
11 stay violation was, therefore, not willful and claims for damages and attorney's are properly fees
12 denied. *In re Walker*, 336 B.R. 534 (Bankr. M.D. Fla. 2005).

13 Debtor alleges that the Subject Assets were determined to be exempt assets. Because Bank
14 did not receive proper notice and did not have the opportunity to oppose the exemption claim, any
15 exemption determination is not binding on Bank.

16 ***The Adversary Claim.***

17 On March 14, 2011, Debtor filed the instant adversary proceeding, seeking the return of
18 the Subject Assets and damages for the Bank's alleged actions. In connection with its complaint,
19 Debtor obtained a preliminary injunction directing Bank to preserve and store the Subject Assets.

20 The testimony will confirm that Debtor obtained the return of car prior to complaint being
21 filed and the inclusion of the car in complaint was in error (item a).

22 Additionally, the EVAP machine was leased in All American's own name and was owned
23 by Irwin Commercial Finance, , so Debtor does not have any interest in same.

24 With respect to the Smog Equipment (items g, i, q), same were leased from BWC Leasing,
25 and thus Debtor does not own same. There is not any evidence that Debtor exercised any buyout
26 of leased equipment. Accordingly, Debtor does not have any standing to assert claims respecting
27 the Smog Equipment, because same is owned by BWC Leasing. The testimony will establish that
28

1 all lease payments on same were made by All American. Thus, even if the buyout was exercised,
2 same would be owned by All American.

3 With respect to the black hoses (item l), the testimony will be that same are not owned by
4 Debtor, but are owned by friend of Debtor. The evidence will establish that Bank received and
5 stored the black hoses, that same were part of the gasoline pumps at the service station, and that
6 same were either integral part of gasoline pumps so as to constitute fixtures subject to the Bank's
7 UCC lien or became part of the Real Property and were foreclosed by the Bank's deed of trust.

8 Debtor has not produced any evidences of title with respect to any of the items in b-f, j-k,
9 m-p, r-y. Additionally the testimony will confirm that all monies used to operate business and
10 to purchase supplies were paid by All American. Thus, any payments for items in b-f, j-k, m-p,
11 r-would have been made by All American and such assets would have thus been All American's.
12 Lastly, items in b-f, j-k, m-p, r-y are not scheduled in Debtor' schedule of personal property -
13 Schedule B. To be properly reflected, they would have had to be shown as being used in trade
14 or business, and need to be scheduled as such on Schedule B, parts 28 (office equipment), 29
15 (machinery, fixtures, equipment and supplies used in business), and 30 (inventory) (parts 4, are
16 all "Household goods"). The only items listed are in part 29 of Schedule B: Automotive
17 equipment including wheel balancer and smog machine valued at \$5600. None of the items other
18 than Smog Equipment (items g, i, q) and/or EVAP Machine (item h), constitute "automotive
19 equipment", and thus same have not been adequately scheduled.

20 Similarly, items in b-f, j-k, m-p, r-y are not scheduled in Exemptions List, Schedule C.
21 Schedule C lists Mechanical Equipment valued at \$4000.

22 ***Clarity and Completeness of Schedules***

23 Listing the assets of a controlled corporation in the shareholder's Schedule B misrepresents
24 their ownership and does not bring them within the protection of 11 U.S.C. Section 362(a). *In*
25 *re Comoletti*, 2009 WL 4267343, at p. 7 (Bkrtcy. M.D. Fla. 2009).

26 A paramount duty of the debtor is the duty to file a list of creditors, schedules of assets,
27 liabilities, income, and expenditures, and a statement of financial affairs. 11 U.S.C. § 521(1). The
28 debtor must file a list of property claimed as exempt. 11 U.S.C. § 522(l). *In re Mohring*, 142

1 B.R. 389, 394 (ED Cal. 1992). The completeness and accuracy of a debtor's schedules are at the
2 heart of the bankruptcy system, and their importance can hardly be understated. The proper
3 "operation of the bankruptcy system depends on honest reporting." *Id*; *Payne v. Wood*, 775 F.2d
4 202, 205 (7th Cir.1985).

5 The requirement that the debtor list the property on the schedules serves at least two
6 functions. One is to settle claims of title, so that on the day of discharge everyone knows who
7 owns what. The other is to allow the trustee to decide which claims to challenge. Debtors are not
8 perfectly trustworthy, and unless the claim of exemption contains sufficient detail to put the trustee
9 on notice of questionable assertions, it will not be possible to administer the statutory scheme.
10 *Payne v. Wood*, *supra*, 775 F.2d 202. This approach is consonant with that of the Ninth Circuit.
11 *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316, 1319– 20 (9th Cir.1992); *In re Mohring*, *supra*,
12 142 B.R. at 395 n.16.

13 The rule in the Ninth Circuit is that trustee and creditors should be able to determine
14 whether an exemption is valid by reading the schedules. *In re Mohring*, *supra*, 142 B.R. at 394;
15 *Hyman*, *supra*, 967 F.2d at 1319– 20.

16 While there are no bright-line rules for how much itemization and specificity is required,
17 what is required is reasonable particularization under the circumstances. *In re Mohring*, *supra*,
18 142 B.R. at 394. The required degree of specificity increases when itemizing property that is
19 claimed as exempt under Section 522. Two purposes are served by detailed lists of property
20 claimed as exempt. First, claims of title are easily established on the day of discharge. Second,
21 parties in interest are able to decide which claims to challenge. The premium on timely objection
22 heightens the demand for accurate and complete lists and schedules. Ambiguities in matters of
23 claims of exemption will be construed against the debtor because "it is important that trustees and
24 creditors be able to determine precisely whether a listed asset is validly exempt simply by reading
25 a debtor's schedules." *Payne v. Wood*, *supra*, 775 F.2d at 206; *Hyman*, *supra*, 967 F.2d at
26 1319– 20 n. 6; *In re Mohring*, *supra*, 142 B.R. at 395.

27 The operative principle here is that although bankruptcy confers substantial benefits on the
28 honest but unfortunate debtor, including a discharge of debts, the ability to retain exempt

1 property, and the ability to avoid certain liens that impair exemptions, there is a price. The debtor
2 must comply in good faith with the duties imposed by bankruptcy law. One seeking benefits under
3 the Bankruptcy Code must satisfy the duty to schedule, for the benefit of creditors, all one's
4 interests and property rights. *Oneida Motor Freight, Inc.*, 848 F.2d 414, 416 (3rd Cir.1988).
5 Failure to comply may warrant denial or, pending compliance, deferral of benefits. *In re Mohring*,
6 *supra*, 142 B.R. at 396.

7 Measured by these standards, Debtor's schedules in this case are wholly inadequate. Even
8 assuming that notice to Bank was sufficient, Bank is not be required to guess at what is claimed
9 in the exemptions. By this adversary action, Debtor has demonstrated that he can provide
10 adequate detail as to what he claims he owns. Debtor could have attached exhibits and additional
11 detail to his schedules, in order to provide the added level of clarity, so that the Bank could
12 evaluate the claims and determine how and which claims it wanted to challenge. Any analysis of
13 the adequacy of the descriptions contained in the schedules are to be construed against Debtor.
14 *In re Mohring, supra*, 142 B.R. at 395 n.17 (generic listing of "household goods" is
15 unquestionably ambiguous).

16 ***Standards for Damages.***

17 If the court finds violation of the stay and injunction statutes, the violations will at best be
18 technical violations for items having nominal value. Debtor valued the Subject Assets in his
19 Schedules B and C at between \$4500 and \$5600. As shown above, the major assets comprising
20 the claimed Subject Assets were owned by All American. Even if some of the items comprising
21 the Subject Assets were in fact owned by Debtor, the failure to return same is at most a technical
22 violation. Sanctions for a mere technical violation are inappropriate where the situation "lack[
23 s] the element of willfulness or maliciousness that is usually required before a Court will issue
24 contempt sanctions." *In re Cox*, 53 B.R. 829, 831 (Bankr. M.D. Fla. 1985).

25 The evidence will show that, other than in connection with Debtor's failed motion for
26 summary judgement, Bank never received and the Bank's records do not contain any evidence of
27 title, including the claimed bill of sale related to the original 2000 purchase of the gasoline
28

1 business. The absence of such a document is admissible itself as a business record. United States
2 Federal Rules of Evidence, 28 U.S.C. §803(7).

3 The measure of the debtor's actual damages for failing to return assets of the estate must
4 be the market value of the debtor's goods at the time of their conversion. *In re Seaton*, 462 B.R.
5 582, 596 (ED Va 2011). We cannot emphasize strongly enough that it is important that debtors
6 complete their Schedules accurately. They are, of course, prepared on a self-declaratory “honor
7 system.” They must therefore be considered highly significant, at least when invoked against a
8 debtor to attempt to hold it to its own “honor-system” declarations. *Id.* The failure of a debtor
9 to list items in its schedule precludes the court from awarding relief with respect to same. *Id.*
10 at 599.

11 Since Debtor’s schedules confirm that the Subject Assets are worth at most \$5600, any
12 award of damages should be limited to that amount or to an order that same be surrounded to
13 Debtor.

14 ***Fees Must be Reasonable and Proportional to Damages.***

15 If the court finds violations of the stay/injunction statutes, and further finds that somehow
16 the notice provided to Bank of the pending Chapter 7 case was sufficient to satisfy the
17 requirements of Section 342, the law provides that attorneys' fees and costs are recoverable under
18 Section 362(k) must be reasonable and necessary. The policy of Section 362(k) to discourage
19 willful violations of the automatic stay, is tempered by a reasonableness standard born of courts'
20 reluctance to foster a cottage industry built around satellite litigation. It is well established that
21 [reasonable and necessary fees do not include unnecessary litigation costs. *In re Beebe*, 435 B.R.
22 95, 101 (Bankr. NDNY 2010). The proportionality of the fee award to the damages sought, is
23 a significant factor in determining the reasonableness of attorneys’ fees. *In re Mosher, supra*, 432
24 B.R. at 476; *In re Seaton, supra*, 462 B.R. at 596. Here, the Subject Assets are scheduled at
25 between \$4000 and \$5600 (which includes many assets that Debtor never owned or that Debtor
26 had in his possession), so any large damage and/or attorneys’ fees award must be measured by
27 the acknowledged value of the Subject Assets that are the subject of the pending lawsuit.

28 **CONCLUSION**

1 Bank believes that the court will have no difficulty finding that the objective evidence
2 establishes that the Subject Assets were transferred to All American in 2004, were subject to liens
3 in favor of Bank in 2007, and were lost to foreclosure at Bank's unified foreclosure sale in 2010.
4 Even if the court determines that some or all of the Subject Assets were in fact retained by
5 Debtor, Debtor's failure to provide Bank with proper notice of his bankruptcy, the failure to
6 adequately describe the Subject Assets in Debtor's schedules, and the nominal value of such assets
7 as listed in Debtor's schedules all mitigate in favor of determining a nominal amount of damages.

8 Dated: April 22, 2013

ROBERTSON & LEWIS

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